

Introduced by Senator Ducheny

February 18, 2005

An act to ~~amend Section 143 of~~ *add Section 143.1 to* the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 463, as amended, Ducheny. Toll roads: *State Highway Route 125*.

Existing law, until January 1, 2003, authorized the Department of Transportation to solicit proposals and enter into agreements for the construction and lease of no more than 2 toll road projects, and specified the terms and requirements applicable to those projects. Existing law provides that the toll roads constructed under these provisions shall be owned by the state, but leased to a private entity for up to 35 years under the agreement.

This bill, with respect to the agreement entered into by the department under these provisions for State Highway Route 125 in San Diego County, would allow tolls to be collected for that project for a period of up to 45 years, rather than 35 years, under specified terms and conditions. The bill would also authorize the San Diego Association of Governments (SANDAG) to continue the collection of tolls thereafter subject to a ²/₃ vote of the SANDAG board, with excess toll revenues to be used for various projects that improve the operation of the SR 125 corridor.

~~This bill, with respect to the agreement entered into by the department for the State Highway Route 125 toll road in San Diego County, would instead provide for a 45-year lease period, and would~~

~~require that lease period to be reflected in the agreement for that facility dated January 30, 1991, as amended.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 143.1 is added to the Streets and
2 Highways Code, to read:

3 143.1. (a) Notwithstanding any other provision of law, the
4 demonstration toll road project known as State Highway Route
5 125 (SR 125) in the County of San Diego, authorized pursuant to
6 authority granted to the department by Chapter 107 of the
7 Statutes of 1989, as subsequently amended by Chapter 1115 of
8 the Statutes of 1990 and Chapter 688 of the Statutes of 2002,
9 shall be subject to tolls for a period of up to 45 years under the
10 following additional terms and conditions:

11 (1) If agreed to by the private entity and the department, and
12 subject to concurrence by the San Diego Association of
13 Governments (SANDAG), the County of San Diego, the City of
14 San Diego, and the City of Chula Vista, by January 2010, all of
15 whom shall exercise their good faith efforts to reach that
16 agreement and concurrence, the SR 125 franchise agreement
17 shall be amended to provide for a lease period of up to 45 years,
18 which shall be reflected in the SR 125 Development Franchise
19 Agreement, dated January 30, 1991, as amended. If an
20 amendment to extend the lease period is agreed to by the parties,
21 the tolls collected during any extension period shall be used for
22 one or more of the following purposes, as specified in the
23 amendment to the agreement:

24 (A) By the private entity to reimburse it for project costs
25 incurred on behalf of the department or SANDAG.

26 (B) By the private entity to compensate or reimburse it for
27 project costs or other impacts for which it is entitled to
28 compensation pursuant to the development franchise agreement
29 or other agreements in effect as of June 30, 2006, with or
30 between the private entity and SANDAG concerning SR 125.

31 (C) By the private entity to reimburse the department or
32 SANDAG for project costs permitted under the development
33 franchise agreement in effect as of June 30, 2006.

(D) By the private entity for one or more of the following purposes: the private entity's capital outlay costs for the project; the costs associated with operations, toll collection, and administration of the facility; reimbursement of the state for the costs of maintenance and police services; or a reasonable return on investment to the private entity.

(E) The development franchise agreement or any amendment thereto shall require that any excess toll revenue either be applied to repayment of the indebtedness incurred by the private entity with respect to the project, or payment into the State Highway Account for the benefit of the San Diego region, or both.

(2) If an amendment to the SR 125 Development Franchise Agreement is not executed by January 31, 2010, or if an amendment to the agreement is executed by January 31, 2010, that extends the lease period for less than 10 additional years, the department and SANDAG may agree, subject to concurrence by the County of San Diego, the City of San Diego, and the City of Chula Vista, to operate and maintain the toll road for any remaining period of time up to a maximum of 10 years following expiration of the agreement. Tolls collected by the department or SANDAG shall be used to reimburse the department or SANDAG, as applicable, for the SR 125 project costs permitted under the development franchise agreement in effect as of June 30, 2006.

(3) Except as specifically amended consistent with this section, the SR 125 Development Franchise Agreement shall remain in full force and effect as set forth therein, and this section shall not be deemed to modify any rights or obligations of the parties thereto.

(b) SANDAG may operate the SR 125 facility and continue the collection of tolls upon the expiration of the SR 125 Development Franchise Agreement or the up to 10-year period specified in paragraph (2) of subdivision (a), as applicable, subject to a ²/₃ vote of the SANDAG board, pursuant to a plan that specifies the expenditure of toll revenues for projects within the SR 125 corridor. The operation and toll collection may be done in cooperation with the department or solely by SANDAG, with toll revenues to be available for the costs associated with operations, toll collection, and administration of the facility, and

1 reimbursement of the state for the costs of maintenance and
2 police services. Projects eligible for funding from excess toll
3 revenues shall be limited to projects that improve the operation
4 of SR 125, including highway and street projects, truck-only
5 lanes, and transit services and facilities. Any changes to the plan
6 shall require a $\frac{2}{3}$ vote of the SANDAG board.

7 SECTION 1. ~~Section 143 of the Streets and Highways Code~~
8 ~~is amended to read:~~

9 143. (a) ~~The department may solicit proposals and enter into~~
10 ~~agreements with private entities, or consortia thereof, for the~~
11 ~~construction by, and lease to, private entities of two public~~
12 ~~transportation demonstration projects. The department shall not~~
13 ~~enter into an agreement for any new proposals under this~~
14 ~~authority after January 1, 2003.~~

15 (b) ~~For the purpose of facilitating those projects, the~~
16 ~~agreements may include provisions for the lease of rights-of-way~~
17 ~~in, and airspace over or under, state highways, for the granting of~~
18 ~~necessary easements, and for the issuance of permits or other~~
19 ~~authorizations to enable the private entity to construct~~
20 ~~transportation facilities supplemental to existing state-owned~~
21 ~~transportation facilities. Facilities constructed by a private entity~~
22 ~~pursuant to this section shall, at all times, be owned by the state.~~
23 ~~The agreement shall provide for the lease of those facilities to the~~
24 ~~private entity for up to 35 years, except that the agreement for the~~
25 ~~State Highway Route 125 franchise shall provide a 45-year lease~~
26 ~~period, which shall be reflected as such in the State Highway~~
27 ~~Route 125 Development Franchise Agreement, dated January 30,~~
28 ~~1991, as amended. In consideration therefor, the agreement shall~~
29 ~~provide for complete reversion of the privately constructed~~
30 ~~facility to the state at the expiration of the lease at no charge to~~
31 ~~the state.~~

32 (c) ~~The department may exercise any power possessed by it~~
33 ~~with respect to the development and construction of state~~
34 ~~transportation projects to facilitate the development and~~
35 ~~construction of transportation projects pursuant to this section.~~
36 ~~Agreements for maintenance and police services entered into~~
37 ~~pursuant to this section shall provide for full reimbursement for~~
38 ~~services rendered by the department or other state agencies. The~~
39 ~~department may provide services for which it is reimbursed with~~

1 respect to preliminary planning, environmental certification, and
2 preliminary design of the demonstration projects.

3 ~~(d) (1) Agreements entered into pursuant to this section shall~~
4 ~~authorize the private entity to impose tolls for use of a facility~~
5 ~~constructed by it, and shall require that over the term of the lease~~
6 ~~the toll revenues be applied to payment of the private entity's~~
7 ~~capital outlay costs for the project, the costs associated with~~
8 ~~operations, toll collection, administration of the facility,~~
9 ~~reimbursement to the state for the costs of maintenance and~~
10 ~~police services, and a reasonable return on investment to the~~
11 ~~private entity. The agreement shall require that any excess toll~~
12 ~~revenue either be applied to any indebtedness incurred by the~~
13 ~~private entity with respect to the project or be paid into the State~~
14 ~~Highway Account, or both.~~

15 ~~(2) The authority to collect tolls for the use of these facilities~~
16 ~~shall terminate at the expiration of the franchise agreement.~~

17 ~~(e) The plans and specifications for each project constructed~~
18 ~~pursuant to this section shall comply with the department's~~
19 ~~standards for state transportation projects. A facility constructed~~
20 ~~by and leased to a private entity shall, during the term of the~~
21 ~~lease, be deemed to be a part of the state highway system for~~
22 ~~purposes of identification, maintenance, enforcement of traffic~~
23 ~~laws, and for the purposes of Division 3.6 (commencing with~~
24 ~~Section 810) of Title 1 of the Government Code.~~

25 ~~(f) The assignment authorized by subdivision (e) of Section~~
26 ~~130240 of the Public Utilities Code is consistent with this~~
27 ~~section.~~